

Part 5

Long Term Care Facility - Medicaid Certification

26-18-501 Definitions.

As used in this part:

- (1) "Certified program" means a nursing care facility program with Medicaid certification.
- (2) "Director" means the director of the Division of Health Care Financing.
- (3) "Medicaid certification" means the right of a nursing care facility, as a provider of a nursing care facility program, to receive Medicaid reimbursement for a specified number of beds within the facility.
- (4)
 - (a) "Nursing care facility" means the following facilities licensed by the department under Chapter 21, Health Care Facility Licensing and Inspection Act:
 - (i) skilled nursing facilities;
 - (ii) intermediate care facilities; and
 - (iii) an intermediate care facility for people with an intellectual disability.
 - (b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998).
- (5) "Nursing care facility program" means the personnel, licenses, services, contracts and all other requirements that shall be met for a nursing care facility to be eligible for Medicaid certification under this part and division rule.
- (6) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated.
- (7) "Rural county" means a county with a population of less than 50,000, as determined by:
 - (a) the most recent official census or census estimate of the United States Census Bureau; or
 - (b) the most recent population estimate for the county from the Utah Population Estimates Committee, if a population figure for the county is not available under Subsection (7)(a).
- (8) "Service area" means the boundaries of the distinct geographic area served by a certified program as determined by the division in accordance with this part and division rule.
- (9) "Urban county" means a county that is not a rural county.

Amended by Chapter 276, 2016 General Session

26-18-502 Purpose -- Medicaid certification of nursing care facilities.

- (1) The Legislature finds:
 - (a) that an oversupply of nursing care facilities in the state adversely affects the state Medicaid program and the health of the people in the state;
 - (b) it is in the best interest of the state to prohibit nursing care facilities from receiving Medicaid certification, except as provided by this part; and
 - (c) it is in the best interest of the state to encourage aging nursing care facilities with Medicaid certification to renovate the nursing care facilities' physical facilities so that the quality of life and clinical services for Medicaid residents are preserved.
- (2) Medicaid reimbursement of nursing care facility programs is limited to:
 - (a) the number of nursing care facility programs with Medicaid certification as of May 9, 2016; and
 - (b) additional nursing care facility programs approved for Medicaid certification under the provisions of Subsections 26-18-503(5) and (7).

- (3) The division may not:
 - (a) except as authorized by Section 26-18-503:
 - (i) process initial applications for Medicaid certification or execute provider agreements with nursing care facility programs; or
 - (ii) reinstate Medicaid certification for a nursing care facility whose certification expired or was terminated by action of the federal or state government; or
 - (b) execute a Medicaid provider agreement with a certified program that moves to a different physical facility, except as authorized by Subsection 26-18-503(3).

Amended by Chapter 276, 2016 General Session

26-18-503 Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.

- (1)
 - (a) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).
 - (b) The division may renew Medicaid certification of a nursing care facility program that is not currently certified if:
 - (i) since the day on which the program last operated with Medicaid certification:
 - (A) the physical facility where the program operated has functioned solely and continuously as a nursing care facility; and
 - (B) the owner of the program has not, under this section or Section 26-18-505, transferred to another nursing care facility program the license for any of the Medicaid beds in the program; and
 - (ii) the number of beds granted renewed Medicaid certification does not exceed the number of beds certified at the time the program last operated with Medicaid certification, excluding a period of time where the program operated with temporary certification under Subsection 26-18-504(4).
- (2)
 - (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:
 - (i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program;
 - (ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4);
 - (iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and
 - (iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).
 - (b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

- (i) is not owned in whole or in part by the previous nursing care facility program; or
 - (ii) is not a successor in interest of the previous nursing care facility program.
- (3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:
 - (a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;
 - (b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;
 - (c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years;
 - (d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;
 - (e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and
 - (f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).
- (4)
 - (a) The entity requesting Medicaid certification under Subsections (2) and (3) shall give written assurances satisfactory to the director or the director's designee that:
 - (i) no third party has a legitimate claim to operate the certified program;
 - (ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and
 - (iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).
 - (b) If a finding is made under the provisions of Subsection (4)(a)(iii):
 - (i) the certified program shall immediately surrender its Medicaid certification and comply with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and
 - (ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).
- (5)
 - (a) As provided in Subsection 26-18-502(2)(b), the director may approve additional nursing care facility programs for Medicaid certification, or additional beds for Medicaid certification within an existing nursing care facility program, if a nursing care facility or other interested party requests Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program, and the nursing care facility program or other interested party complies with this section.
 - (b) The nursing care facility or other interested party requesting Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program under Subsection (5)(a) shall submit to the director:
 - (i) proof of the following as reasonable evidence that bed capacity provided by Medicaid certified programs within the county or group of counties impacted by the requested additional Medicaid certification is insufficient:
 - (A) nursing care facility occupancy levels for all existing and proposed facilities will be at least 90% for the next three years;

- (B) current nursing care facility occupancy is 90% or more; or
- (C) there is no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification; and
- (ii) an independent analysis demonstrating that at projected occupancy rates the nursing care facility's after-tax net income is sufficient for the facility to be financially viable.
- (c) The director shall determine whether to issue additional Medicaid certification by considering:
 - (i) whether bed capacity provided by certified programs within the county or group of counties impacted by the requested additional Medicaid certification is insufficient, based on the information submitted to the director under Subsection (5)(b);
 - (ii) whether the county or group of counties impacted by the requested additional Medicaid certification is underserved by specialized or unique services that would be provided by the nursing care facility;
 - (iii) whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); and
 - (iv) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of Medicaid recipients, which may include the renovation of aging nursing care facilities, as permitted by Subsection (7).
- (6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility property reimbursement methodology to:
 - (a) only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:
 - (i) actual occupancy; or
 - (ii)
 - (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or
 - (B) for a rural nursing care facility, 65% of total bed capacity; and
 - (b) not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.
- (7)
 - (a) Notwithstanding Subsection 26-18-504(4), if a nursing care facility does not seek Medicaid certification for a bed under Subsections (1) through (6), the department shall grant Medicaid certification for additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in the facility if:
 - (i) the nursing care facility program was previously a certified program for all beds but now resides in a new facility or in a facility that underwent major renovations involving major structural changes, and 50% or greater facility square footage design changes, requiring review and approval by the department;
 - (ii) the nursing care facility meets the quality of care regulations issued by the Center for Medicare and Medicaid Services; and
 - (iii) the total number of additional beds in the facility granted Medicaid certification under this section does not exceed 10% of the number of licensed beds in the facility.
 - (b) The department may not revoke the Medicaid certification of a bed under this Subsection (7) as long as the provisions of Subsection (7)(a)(ii) are met.
- (8)
 - (a) If a nursing care facility or other interested party indicates in its request for additional Medicaid certification under Subsection (5)(a) that the facility will offer specialized or unique

services, but the facility does not offer those services after receiving additional Medicaid certification, the director may revoke the additional Medicaid certification.

- (b) If a nursing care facility or other interested party obtains Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program under Subsection (5), but Medicaid reimbursement is not received for a bed within three years of the date on which Medicaid certification was obtained for the bed under Subsection (5), Medicaid certification for the bed is revoked.

Amended by Chapter 276, 2016 General Session

26-18-504 Appeals of division decision -- Rulemaking authority -- Application of act.

- (1) A decision by the director under this part to deny Medicaid certification for a nursing care facility program or to deny additional bed capacity for an existing certified program is subject to review under the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (2) The department shall make rules to administer and enforce this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) A nursing care facility may receive Medicaid certification under the rules in effect prior to July 1, 2004 if the nursing care facility, prior to May 4, 2004:
 - (a)
 - (i) paid applicable fees to the department; and
 - (ii) submits construction plans to the department; or
 - (b) is in a current phase of construction approved by the department.
- (4)
 - (a) In the event the department is at risk for a federal disallowance with regard to a Medicaid recipient being served in a nursing care facility program that is not Medicaid certified, the department may grant temporary Medicaid certification to that facility for up to 24 months.
 - (b)
 - (i) The department may extend a temporary Medicaid certification granted to a facility under Subsection (4)(a):
 - (A) for the number of beds in the nursing care facility occupied by a Medicaid recipient; and
 - (B) for the period of time during which the Medicaid recipient resides at the facility.
 - (ii) A temporary Medicaid certification granted under this Subsection (4) is revoked upon:
 - (A) the discharge of the patient from the facility; or
 - (B) the patient no longer residing at the facility for any reason.
 - (c) The department may place conditions on the temporary certification granted under Subsections (4)(a) and (b), such as:
 - (i) not allowing additional admissions of Medicaid recipients to the program; and
 - (ii) not paying for the care of the patient after October 1, 2008, with state only dollars.

Amended by Chapter 347, 2008 General Session

Amended by Chapter 382, 2008 General Session

26-18-505 Authorization to sell or transfer licensed Medicaid beds -- Duties of transferor -- Duties of transferee -- Duties of division.

- (1) This section provides a method to transfer or sell the license for a Medicaid bed from a nursing care facility program to another entity that is in addition to the authorization to transfer under Section 26-18-503.
- (2)

- (a) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds in accordance with Subsection (2)(b) if:
 - (i) at the time of the transfer, and with respect to the license for the Medicaid bed that will be transferred, the nursing care facility program that will transfer the Medicaid license meets all applicable regulations for Medicaid certification;
 - (ii) 30 days prior to the transfer, the nursing care facility program gives a written assurance to the director and to the transferee in accordance with Subsection 26-18-503(4);
 - (iii) 30 days prior to the transfer, the nursing care facility program that will transfer the license for a Medicaid bed notifies the division in writing of:
 - (A) the number of bed licenses that will be transferred;
 - (B) the date of the transfer; and
 - (C) the identity and location of the entity receiving the transferred licenses; and
 - (iv) if the nursing care facility program for which the license will be transferred or purchased is located in an urban county with a nursing care facility average annual occupancy rate over the previous two years less than or equal to 75%, the nursing care facility program transferring or selling the license demonstrates to the satisfaction of the director that the sale or transfer:
 - (A) will not result in an excessive number of Medicaid certified beds within the county or group of counties that would be impacted by the transfer or sale; and
 - (B) best meets the needs of Medicaid recipients.
 - (b) Except as provided in Subsection (2)(c), a nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds to:
 - (i) a nursing care facility program that has the same owner or successor in interest of the same owner;
 - (ii) a nursing care facility program that has a different owner;
 - (iii) notwithstanding Section 26-18-502, an entity that intends to establish a nursing care facility program; or
 - (iv) notwithstanding Section 26-18-502, a related-party nonnursing-care-facility entity that wants to hold one or more of the licenses for a future nursing care facility program not yet identified, as long as:
 - (A) the licenses are subsequently transferred or sold to a nursing care facility program within three years; and
 - (B) the nursing care facility program notifies the director of the transfer or sale in accordance with Subsection (2)(a)(iii).
 - (c) A nursing care facility program may not transfer or sell one or more of its licenses for Medicaid beds to an entity under Subsection (2)(b)(i), (ii), (iii), or (iv) that is located in a rural county unless the entity requests, and the director issues, Medicaid certification for the beds under Subsection 26-18-503(5).
- (3) An entity under Subsection (2)(b)(i), (ii), (iii), or (iv) that receives or purchases a license for a Medicaid bed under Subsection (2)(b):
- (a) may receive a license for a Medicaid bed from more than one nursing care facility program;
 - (b) within 14 days of seeking Medicaid certification of beds in the nursing care facility program, give the division notice of the total number of licenses for Medicaid beds that the entity received and who it received the licenses from;
 - (c) may only seek Medicaid certification for the number of licensed beds in the nursing care facility program equal to the total number of licenses for Medicaid beds received by the entity;

- (d) notwithstanding Section 26-18-502, does not have to demonstrate need or seek approval for the Medicaid licensed bed under Subsection 26-18-503(5), except as provided in Subsections (2)(a)(iv) and (2)(c);
 - (e) shall meet the standards for Medicaid certification other than those in Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities under Chapter 21, Health Care Facility Licensing and Inspection Act; and
 - (f) shall obtain Medicaid certification for the licensed Medicaid beds within three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).
- (4)
- (a) When the division receives notice of a transfer of a license for a Medicaid bed under Subsection (2)(a)(iii)(A), the department shall reduce the number of licenses for Medicaid beds at the transferring nursing care facility:
 - (i) equal to the number of licenses transferred; and
 - (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).
 - (b) For purposes of Section 26-18-502, the division shall approve Medicaid certification for the receiving entity:
 - (i) in accordance with the formula established in Subsection (3)(c); and
 - (ii) if:
 - (A) the nursing care facility seeks Medicaid certification for the transferred licenses within the time limit required by Subsection (3)(f); and
 - (B) the nursing care facility program meets other requirements for Medicaid certification under Subsection (3)(e).
 - (c) A license for a Medicaid bed may not be approved for Medicaid certification without meeting the requirements of Sections 26-18-502 and 26-18-503 if:
 - (i) the license for a Medicaid bed is transferred under this section but the receiving entity does not obtain Medicaid certification for the licensed bed within the time required by Subsection (3)(f); or
 - (ii) the license for a Medicaid bed is transferred under this section but the license is no longer eligible for Medicaid certification as a result of the conversion factor established in Subsection (3)(c).

Amended by Chapter 276, 2016 General Session